

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

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<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
	)	
	)	
<b>TREW INDUSTRIAL WHEELS, INC.</b>	)	
	)	
	)	
<b>RESPONDENT</b>	)	<b>CASE NO. WPC07-0160</b>

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**DIRECTOR’S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the “director” and the “division” respectively) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “commissioner” and the “department” respectively).

**II.**

TREW Industrial Wheels, Inc. (hereinafter the “Respondent”) is a domestic corporation licensed to do business in Tennessee. The Respondent owns and operates an industrial wheel manufacturing company located at 310 Wilhagan Road, in Nashville,

Tennessee 37217 (hereinafter “the site”). Service of process may be made on Jeffrey Witte, Registered Agent, 310 Wilhagan Road, Nashville, Tennessee 37217.

## **JURISDICTION**

### **III.**

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (hereinafter the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

### **IV.**

The Respondent is a “person” as defined at T.C.A. §69-3-103(20) and, as hereinafter stated, the Respondent has violated the Act.

## V.

Mill Creek is referred to herein as “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, “Use Classifications For Surface Waters,” is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, Mill Creek has been classified for the following uses: Fish and Aquatic Life (Non-Supporting), Recreation (Non-Supporting), Irrigation (Supporting), Livestock Watering and Wildlife (Supporting). In addition, Mill Creek is considered an High Quality Tennessee water due to presence of federally listed endangered Nashville Crayfish.

## FACTS

## VI.

On January 28, 2002, the Respondent applied to the division for coverage under the TMSP for storm water discharges associated with industrial activity. On March 14, 2002, the Respondent was issued coverage and assigned a tracking number TNR053987. Requirements of the TMSP include, but are not limited to, developing a Storm Water Pollution Prevention Plan (SWPPP), performing and retaining records of quarterly visual inspections of storm water outfalls, maintaining Best Management Practices (BMPs) to reduce pollutants present in storm water discharges associated with industrial activity, and the annual monitoring and reporting of concentrations of specified pollutants present in the storm water discharges from the site.

## **VII.**

On April 7, 2004, division personnel conducted a Compliance Evaluation Inspection (CEI) of the site. The CEI showed that operations at the site were not in compliance with TMSP permit requirements. The Storm Water Pollution Prevention Plan (SWPPP) was not available for review at the facility, and no records or documentation related to quarterly visual inspections, annual comprehensive site reviews, or storm water sampling and analysis could be located. On April 21, 2004, a Notice of Violation (NOV) was sent to the Respondent. The NOV required that the Respondent develop and implement a SWPPP and submit a copy to the division within thirty days of the receipt of the NOV. To this date, the SWPPP has not been submitted to the division.

## **VIII.**

On August 4, 2004, a Notice of Violation (NOV) was sent to the Respondent. Part VI of the TMSP requires facilities to conduct sampling of their storm water discharges associated with industrial activity once per year. For each outfall, one storm water monitoring report from must be submitted per storm event sampled. Based on the Respondent's standard industrial classification (SIC) code 3069, sampling of Total Zinc is required according to the TMSP sector Y, sampling table Y-1. The respondent failed to submit required 2003 storm water data. The NOV required that 2003 storm water monitoring data or an explanation why the facility failed to monitor discharges be submitted to the division by August 27, 2004. To this date, the storm water monitoring data or a response to the NOV have not been submitted to the division.

## **IX.**

On June 26, 2007, division personnel conducted a CEI of the site. The CEI showed that the site was still not in compliance with its TMSP permit requirements. The SWPPP was still not available for review at the facility, and no records or documentation related to quarterly visual inspections, annual comprehensive site reviews, or storm water sampling and analysis could be located. In addition, no BMPs for control of storm water were being used, allowing for untreated contaminated storm water to be discharged from the site. On June 29, 2007, a NOV was sent to the Respondent. The NOV required that the Respondent develop a corrective action plan that addresses the violations noted in the NOV and the comments noted on the CEI form given to the Respondent during the inspection.

## **X.**

During the course of investigating this matter, the division incurred damages in the amount of FIVE HUNDRED ELEVEN DOLLARS AND THIRTY FIVE CENTS (\$511.35).

## **VIOLATIONS**

## **XI.**

By failing to comply with the requirements of the Tennessee Multi-Sector General Permit for storm water discharges associated with industrial activities, the Respondent has violated T.C.A. Sections §69-3-108(b) and 69-3-114(b):

T.C.A. §69-3-108(b) states, in part:

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

(1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state; [...]

(4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized; [...]

(6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

T.C.A. §69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

## **ORDER AND ASSESSMENT**

### **XII.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. As soon as possible, but not later than 30 days of receipt of this Order, the Respondent shall develop and implement Storm Water Pollution Prevention

Plan (SWPPP) and appropriate Best Management Practices (BMPs) to assure compliance with terms and conditions of the permit.

2. A copy of the SWPPP and written and photographic documentation that BMPs have been implemented is to be sent to the Water Pollution Control manager of the Nashville Environmental Field Office (NEFO), at 711 R.S. Gass Boulevard, Nashville, Tennessee 37243, by August 31, 2007.
3. The Respondent shall update the SWPPP for this site as necessary and maintain the updated SWPPP on site and readily available for viewing.
4. The Respondent is hereby assessed a CIVIL PENALTY in the amount of TEN THOUSAND FIVE HUNDRED DOLLARS (\$10,500.00).
  - a. The Respondent shall pay TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) to the division within THIRTY (30) DAYS of receipt of this Order.
  - b. The Respondent shall pay THREE THOUSAND DOLLARS (\$3,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 1 above in a timely manner.
  - c. The Respondent shall pay THREE THOUSAND DOLLARS (\$3,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 2 above in a timely manner.
  - d. The Respondent shall pay TWO THOUSAND DOLLARS (\$2,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 3 above in a timely manner.

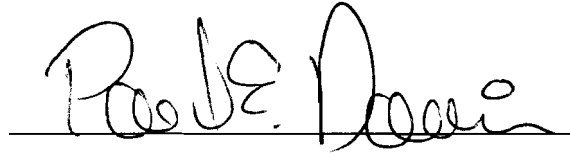
5. The Respondent is hereby assessed DAMAGES in the amount of FIVE HUNDRED ELEVEN DOLLARS AND THIRTY FIVE CENTS (\$511.35) payable within THIRTY (30) DAYS of receipt of this Order and Assessment.
6. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

Further, the Respondent is advised that the foregoing Order is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future. The director may, for good cause shown by the Respondent, extend for a fixed time period, the compliance dates contained within this Order.

To be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay. The director will reply to the Respondent's request in writing. Should the Respondent fail to meet the requirement by the extended date, any associated CIVIL PENALTY shall become due THIRTY (30) DAYS thereafter.



Issued by the Director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 3<sup>RD</sup> day of AUGUST, 2007.

A handwritten signature in black ink, appearing to read "Paul E. Davis", is written over a horizontal line.

Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

#### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§69-3-109 and 69-3-115, allow the Respondent to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the director at the address below a written petition setting forth each Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment.

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301

*et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. The petition should be sent to: Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Please write your case number on all payments and all correspondence concerning this matter.